

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES LUEDTKE,

Plaintiff,

v.

DALE DROZD, et al.,

Defendants.

Case No. 1:20-cv-01662-NONE-SAB

ORDER REQUIRING PLAINTIFF TO
SHOW CAUSE WHY THIS ACTION
SHOULD NOT BE DISMISSED FOR
FAILURE TO PAY THE FILING FEE

FOURTEEN DAY DEADLINE

James Luedtke (“Plaintiff”), a state prisoner, is appearing *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed a complaint and a motion to appoint counsel on November 24, 2020. Plaintiff did not pay the filing fee or submit an application to proceed in this action *in forma pauperis*.

Pursuant to 28 U.S.C. § 1915(g), “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”

The Court takes judicial notice of the following cases: (1) Luedtke v. United States of America, 1:99-cv-00503-UNA (D.D.C.) (dismissed 2/26/99 for failure to state a claim); (2) Luedtke v. United States of America, 1:99-cv-00513-UNA (D.D.C.) (dismissed 2/26/99 for

failure to state a claim); 3) Luedtke v. Posner, 1:99-cv-01695 (S.D. Ill.) (dismissed 3/22/99 for failure to state a claim);¹ 4) Luedtke v. Obama, 1:14-cv-00389-UNA (D.D.C.) (dismissed 3/12/14 for failure to state a claim); 5) Luedtke v. Obama, 14-5084 (6th Cir.) (dismissing on Court's own motion on 1/14/15 under 28 U.S.C. § 1915(g) (frivolous, malicious, or failure to state a claim). Prior to filing this action, Plaintiff has had at least three cases that were dismissed as frivolous or for failure to state a claim. Therefore, Plaintiff is not entitled to proceed in this action *in forma pauperis* unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

The Court has reviewed Plaintiff's complaint and finds that his allegations do not satisfy the imminent danger exception to section 1915(g). Andrews v. Cervantes, 493 F.3d 1047, 1053–55 (9th Cir. 2007). In the current complaint, Plaintiff generally alleges that District Judge Drozd, and Magistrate Judges Oberto, McAuliffe, and Grosjean are denying that he has any constitutional rights, dismissing his cases by rubber stamp, and reducing them to a single piece of paper.

The allegations in the complaint are not sufficient to satisfy the exception from the three strikes bar under 28 U.S.C. § 1915(g). Plaintiff's complaint contains no allegations demonstrating that he is at imminent danger of serious physical injury. Plaintiff is basically alleging that he is unhappy with the manner in which his cases have been handled by various judges.

Finding that Plaintiff is precluded from proceeding without prepayment of fees under section 1915(g) and that the complaint does not allege that he is in imminent danger, IT IS HEREBY ORDERED that, within **fourteen (14) days** of the date of service of this order, Plaintiff shall either 1) show cause in writing why this case should not be dismissed for failure to pay the filing fee; or 2) pay the full \$400.00 initial filing fee in full to proceed with this action.

¹ The Court also notes these cases which reflect a different prisoner number but review of the complaints demonstrate that the writing is identical to Plaintiff's. The court also takes judicial notice that Plaintiff has been found to have three strikes by the following cases: 1) Luedtke v. Posner, 1:01-cv-00172 (S.D. Ill.) (dismissed 1/16/01 for failure to advise the court that he had "struck out"); 2) Luedtke v. O'Brien, 7:06cv00714 (W.D. Va.) (dismissed 1/5/07 pursuant to 28 U.S.C. § 1915(g)); 3) Luedtke v. Bertrand, 2:98-cv-00284-LA (E.D. Wis.) (dismissing case 2/1/99 pursuant to 28 U.S.C. § 1915(g)); 4) Luedtke v. Bertrand, 2:98-cv-01133-RTR (E.D. Wis.) (dismissing case 1/31/99 pursuant to 28 U.S.C. § 1915(g)).

Plaintiff's failure to comply with this order will result in dismissal of this action. If, after receiving this order, Plaintiff no longer wishes to pursue this action, he shall file a notice of voluntary dismissal.

IT IS SO ORDERED.

Dated: **November 25, 2020**


UNITED STATES MAGISTRATE JUDGE